

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

RODNEY BREWER,

Plaintiff,

v.

CIVIL ACTION NO. 3:22-00267

ELIZABETH SUNYOG and
MATTHEW BAUMGARDENER,

Defendants.

ORDER


Pending before the Court is Plaintiff Rodney Brewer's Objections to the Proposed Findings and Recommendations entered by the Honorable Cheryl A. Eifert, Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B). Plaintiff filed this action *pro se* seeking to recover personal property he alleges was confiscated incident to his arrest. In the Proposed Findings and Recommendations, the Magistrate Judge liberally construed the action as an alleged violation of Plaintiff's due process rights. *PF&R*, at 4, ECF No. 5. After completing a thorough analysis of the claim, the Magistrate Judge recommended dismissing the action because Plaintiff had not taken adequate steps to pursue his post-deprivation remedies within the State court system to attain the return of his property and, thus, he failed to state a cognizable claim under 42 U.S.C. § 1983. *Id.* at 6. Therefore, the Magistrate Judge also recommended Plaintiff's Application to Proceed Without Payment of Fees and Costs be denied. *Id.*

In his “Objections,” Plaintiff makes no actual objections to the specific Findings and Recommendations.¹ Instead, he asserts he “has since filed a motion to compel [the] return of property with the Putnam County Circuit Court” and “[w]ishes to withdraw [his] complaint at this time.” *Obj. to Prop. Findings and Rec.*, ECF No. 6. He further states he wants to reserve his right to bring additional claims and file an appeal to the Fourth Circuit Court of Appeals. *Id.*

Given the contents of Plaintiff’s “Objections,” the Court accepts and incorporates the findings and recommendations of the Magistrate Judge, **DENIES** Plaintiff’s filing as “Objections,” and **GRANTS** his request therein to dismiss his Complaint. To the extent the filing may be construed as a motion to stay this case pending resolution of his state court proceedings, the Court **DENIES** his request, but **DISMISSES** the action **WITHOUT PREJUDICE**, which shall give Plaintiff the opportunity to file another action if necessary following completion of the post-deprivation remedies available to him in State court. The Court further **DENIES** Plaintiff’s Application to Proceed Without Payment of Fees and Costs.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Cheryl A. Eifert, counsel of record, and any unrepresented parties.

ENTER: July 15, 2022



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

¹Plaintiff simply states he “objects because the State has violated his rights of due process by completely ignoring his letters and motion to return property.” *Obj. to PF&R*, ECF No. 6. However, the Magistrate Judge noted Plaintiff’s contention that he “wrote a couple of letters and filed a motion seeking the return of his property,” but she found Plaintiff failed to indicate he took “any other steps to remedy the situation within the State court system[.]” *PF&R*, at 6.